



NEW MEXICO PUBLIC UTILITY COMMISSION

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May 9, 1997

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The Honorable John D. Dingell
Ranking Member
Committee on Commerce Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D. C. 20515

RE: Debate on Restructuring the Electric Power Industry

Dear Representative Dingell:

Thank you for the opportunity to respond to the questions regarding enactment of federal legislation concerning the electricity industry. Attached are responses to your questionnaire of April 10, 1997. If you have any questions or concerns, please call me at (505) 827-6936.

Sincerely,

A handwritten signature in black ink, reading "David P. Warren". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David P. Warren
Executive Director

Attachment

May 8, 1997

LEGISLATION CONCERNING ELECTRICITY INDUSTRY

QUESTIONNAIRE

- 1. Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?**

- A.** The Commission opened a docket to investigate retail competition in September, 1995. The state Legislature has considered legislation every other year since 1993 to open access to retail customers and defeated the legislation each year; however, in the 1997 session a bill was introduced with a broad coalition of supporters including consumers groups, industrial groups, environmental groups, independent power marketers, petroleum trade association, hotel/motel associations and others (seemingly all of the stakeholders except the two investor owned utilities with ownership shares in Palo Verde Nuclear Generating Station, the local generation and transmission coop and the distribution coops, and the scattered municipal utilities).

On May 7, 1997, the Commission, with the concurrence of virtually all of the stakeholders, ordered a collaborative process to begin with a drop dead date of August 1, 1997 to reach consensus on draft legislation and principles for draft rules to provide retail competition in New Mexico.

Parties have also entered into a Stipulation that the Commission has adopted by Order where Texas New Mexico Power Company voluntarily submitted a plan to open retail access by May, 2000 for a service area in south central New Mexico serving 43,000 customers.

Additionally, there is a variant of retail competition introduced by this Commission in October, 1995, which allows coop customers to go to the market and identify a power supplier which the generation and transmission coop will then purchase from the power supplier and wheel to the customer. Initial purchases have shown marked price decreases, which, according to the Commission Order are to flow to both the individual customer and the other members of the coop, thus ensuring equitable economic benefits.

2. **Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?**

- A. Our state has not asked Congress to enact or assist the state with legislation mandating retail legislation.

Our Commission Executive Director has been working with a staff of Senator Jeff Bingaman and has requested that the production tax credit available to wind power facilities in the EPACT of 1992 (due to expire in 1999) be extended in time and also be extended to new solar power facilities which is a vast untapped resource in the Southwest.

3. **Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?**

- A. This Commission believes that we have that authority to resolve stranded cost issues; however, Congress could provide states with the authority to form regional compacts to determine the amount and type of stranded cost recovery for the wholesale portion of the system currently reserved to the FERC. Those joint commissions should also be given oversight and approval over ISO proposals.

4. **Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?**

- A. We believe that PUHCA should not be repealed prior to states and/or Congress implementing open access and a competitive retail market, and subsequent to PUHCA repeal, state commissions should be given oversight and audit capabilities over multi-state holding companies if those holding companies have affiliates in the power supply or marketing business in addition to affiliates in the regulated "wires" business, either transmission or distribution and either ownership or operation.

5. Would any constitutional issues be raised by federal legislation:

a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?

A. This approach would seem to solve the interstate commerce questions that have arisen when states have discussed imposing a reciprocity requirement as a condition of retail access.

b. requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in consumers' best interests?

6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?

A. Of course, the states that have already adopted retail competition would have to revisit legislation or commission orders that have implemented competition, state approval of ISOs may have to be revisited, existing contracts may conflict with provisions of federal legislation, however a benefit to a federal approach may be the nationwide consistency of the restructured industry.

7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.

a. Are you aware of any study or analysis relevant to your State that supports this conclusion?

A. While we are not aware of any studies or analyses supporting this conclusion, it seems evident that some utilities are brokering or wheeling wholesale power through to their industrial customers following FERC 888, and large industrial customers in New Mexico have been able to take advantage of economic development rates, load retention rates and other

economy rates available through state statute or commission approved rates. It would seem apparent, however, that the reason residential customers have not been able to access lower rates is because retail competition is not yet available on a wide basis, whether through state or federal initiatives.

b. Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.

8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.

A. We are seeing some effects of wholesale competition providing lower rates to municipal utilities, and because of commission action allowing customers of coops access to these lower wholesale rates, some coop customers are beginning to see their rates drop. And we are certainly seeing industrial rates beginning to drop and utilities able to pass these savings at the margin along to their larger customers.

9. Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who should receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders or the highest bidder?

A. The authority to regulate rates should not be stripped entirely from state commissions. Some regulatory rate authority should be maintained by the state commissions to provide for universal service, competitive rates if there is a lack of competitive power suppliers in a region, renewable resources and environmental improvement programs, equitable economic benefits across customer classes, and other systems benefits.

10. Of those states which have adopted retail competition, how many have addressed the issue of “reciprocity”, (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail market)? Whose interests does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?
- A. New Mexico needs sellers located in other states to market power in the state in order to provide enough competitors to ensure a competitive market.
11. If Congress were to require “unbundling” of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?
- A. Nothing that couldn’t be dealt with, and in fact, the independent operation of both the transmission and distribution systems is of paramount importance to the proper functioning of a competitive power supply market.
12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?
- A. We do have here in New Mexico, many tribal governments that are just now discovering the potential benefits of the competitive wholesales markets and WAPA power, however they may be limited from accessing that power because it would have to be delivered through, typically, cooperative distribution lines, not FERC jurisdiction transmission lines. The coops, at this point, have resisted this effort, citing stranded costs, all requirements contracts, and ownership of the distribution lines on tribal lands. This jurisdictional issue may have to be resolved by Congress.
13. How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?

- A. Our Commission could certainly use additional funding to ensure the quality rulemaking necessary to provide the structure for a truly competitive market that also continues to provide the potentially stranded benefits as a matter of sound public policy, however, this commission fully supports the move to a competitive marketplace for energy supplies and will do what is necessary to support that move at whatever level of funding is available.

14. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?

- A. Not yet, however it has been mentioned by some parties. The risks are that it will provide a competitive disadvantage to new market entrants, there are tax implications awaiting rulings from the IRS that, if adverse, would place a tremendous amount of risk on the ratepayer.

15. There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.

a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?

- A. Effective competition can be achieved whether or not Congress repeals PUHCA.

b. Do you believe Congress should modify or repeal PUHCA? If so, why, and under what if any conditions?

- A. If and only if a fully competitive retail market is universally available.

c. Should Congress enact legislation to modify the holding in Ohio Power Co. v. FERC, 954 F.2d 779 (D.C.Cir. 1992)?